BEFORE THE MONTGOMERY COUNTY BOARD OF APPEALS

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

Stella B. Werner Council Office Building Rockville, Maryland 20850 (240) 777-6660

IN THE MAT	TTER OF: CRAWFORD	*	
		*	
		*	Board of Appeals No. S-2849
	Petitioner	*	(OZAH No. 12-39)
	Carol A. Crawford	*	,
	For the Petition	*	
* * * * * * * *	* * * * * * * * * * * * * * * * * *	* * *	
	Robert Goff	*	
	Department of Housing and	*	
	Community Affairs	*	
* * * * * * * *	* * * * * * * * * * * * * * * * * *	* * *	

Before: Tammy J. CitaraManis, Hearing Examiner

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I. STATEMENT OF THE CASE

In Petition No. S-2849, Carol A. Crawford seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 9222 Woodland Drive, Silver Spring, Maryland in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 6, Block Q, in the Woodside Park Subdivision. The tax account number is 01431246.

On June 27, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for November 15, 2012. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated September 20, 2012, recommended approval of the special exception, with three (3) conditions. Exhibit 17.

A Housing Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property on October 16, 2012. Housing Code Inspector Robert Goff (Mr. Goff) reported his findings in a memorandum dated October 16, 2012, (Exhibit 13). Mr. Goff reported the accessory apartment to be 412.8 square feet in size with 357 square feet of habitable space. Based on the habitable space, Mr. Goff determined that occupancy was limited to no more than two (2) unrelated persons or a family of three. In a memorandum to Mr. Goff dated November 6, 2012, Ada DeJesus of the DHCA, Licensing and Registration Unit (Ms. DeJesus), reported that there are two (2) accessory apartments and no registered living units (RLU's) in the vicinity of the subject property. Exhibit 15.

The hearing went forward as scheduled on November 15, 2012, and Petitioner Carol A. Crawford appeared *pro se.* Petitioner executed an Affidavit of Posting (Exhibit 19) and

¹ The Technical Staff report is frequently quoted and paraphrased herein. Technical Staff revised the September 20, 2012 (Exhibit 12), staff report to correct the development standards chart to include the side-yard setbacks.

submitted a copy of her deed to the property (Exhibit 18).² Petitioner testified in support of the petition and adopted the findings in the Technical Staff Report (Exhibit 17) and in the Housing Code Inspector's Report (Exhibit 13), as her own evidence and agreed to meet all the conditions set forth in both reports. Tr.15-16. Housing Code Inspector Robert Goff also testified. No opposition appeared at the hearing.

The record was held open until November 27, 2012, to give time to the Court Reporter to complete the hearing transcript. The record closed as scheduled with no further documents other than the transcript being received.

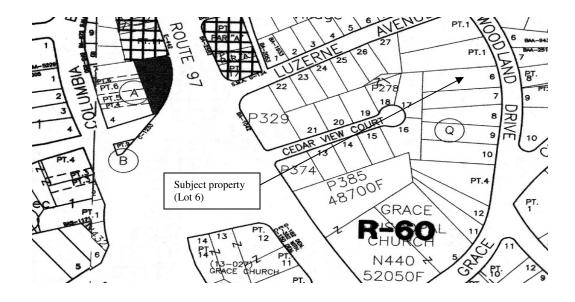
For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property and Its Current Use

The subject property is located at 9222 Woodland Park Drive, Silver Spring, Maryland, on the west side of Woodland Drive which is south of its intersection with Luzerne Avenue and north of Grace Church Road. The Zoning Map for the area is shown on the next page (Exhibit 10).

² The deed to the property is dated December 13, 2010, and was recorded February 15, 2011. The deed reflects a transfer of the property from Petitioner, as an individual, back to herself as sole trustee of the Carol A. Crawford Trust. According to the deed and the Maryland Department of Assessment and Taxation (SDAT) records, Petitioner has owned the property since April 30, 1992. Both reference the prior deed which was "recorded among the Land Records of said County on May 12, 1992, in Liber 0010362, at Folio 076." Exhibits 14 and 18. Petitioner signed the Statement in support of the Petition (Exhibit 3) "Carol A. Crawford, aka Carol A. Crawford Trust." Petitioner testified at the hearing in her capacity as sole trustee of the Carol A. Crawford Trust and expressly consented to Carol A. Crawford, as an individual, obtaining the special exception for an accessory apartment and agreed to be bound by the conditions of the special exception. Tr. 6-10. At the hearing, the Hearing Examiner initially suggested that the Petitioner submit a signed written statement confirming her testimony. Upon further review of the evidence presented, including Petitioner's testimony taken under oath, the Hearing Examiner does not believe a separate signed written statement is necessary. However, a condition to this effect is recommended in Part V of this report.



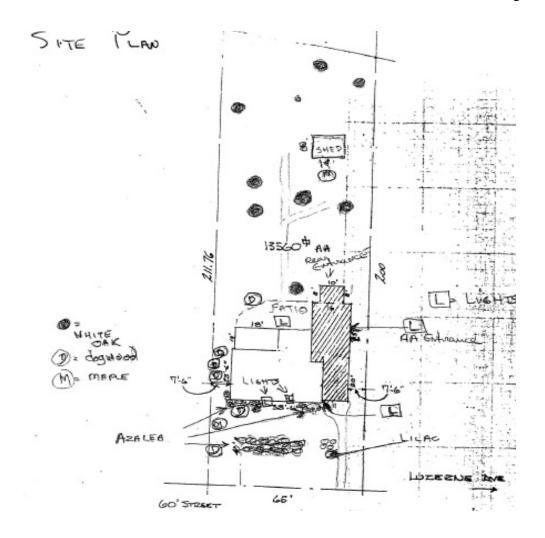
The subject property is an interior lot, rectangular in shape and 13,360 square feet in size. It is in the R-60 Zone and is improved with a one-family detached home with a basement.

Technical Staff described the property as follows (Exhibit 17, p. 2):

The existing two-story house was constructed in 1938 and is 2,860 square feet above ground totaling 3,980 square feet in the structure, including the basement. The house is located on the west side of Woodland Drive, approximately 250 feet south of Luzerne Avenue. The lot is gently sloping, decreasing in elevation towards Woodland Drive. The backyard is mostly treed and is fenced. Existing landscaping is well-maintained. The site has its sole access point from Woodland Drive. The home has ample space for parking on the driveway. In addition, street parking is available along Woodland Drive.

Petitioner converted the one-car garage into living space and built an addition to the rear of the main dwelling in 1979 to create the existing accessory apartment. The addition is located on the rear northwest corner of the dwelling and extends into the backyard which is fenced.

The Site Plan (Exhibit 4) for the property, modified by Petitioner to show the location of the side and rear entrance for the accessory apartment (Exhibit 4), and photographs of the front and side of the home, taken from the Technical Staff report (Exhibit 17, pp. 3-4), are shown on the next page of this report.





Front of House



B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood as "generally bound by Columbia Boulevard to the north, Dale Drive to the northeast, Grace Church Road to the south and southeast, and Georgia Avenue to the West." Exhibit 17, p. 4. The neighborhood consists of approximately 60 one-family detached homes and includes an existing church located on the corner of Georgia Avenue and Grace Church Road. Technical Staff reports that "[t]he entire neighborhood is zoned R-60, except for two blocks of C-2 zoning on Georgia Avenue, between Columbia Boulevard and Luzerne Avenue." Exhibit 17, p. 4. Having no evidence to the contrary, the Hearing Examiner accepts Staff's definition of the general neighborhood.

The neighborhood boundary, which is depicted with a dashed line on the location map shown below (Exhibit 17, p. 5), has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic:

Neighborhood Boundary



Technical Staff advises that there are no other accessory apartments located in the neighborhood. However, Staff noted one other special exception use (gas station) located at the intersection of Georgia Avenue and Columbia Boulevard. In a memorandum to Mr. Goff dated November 6, 2012, Ms. DeJesus reported that there are two (2) accessory apartments and no registered living units (RLU's) in the vicinity of the subject property. Exhibit 15. ³

The Hearing Examiner concurs with Technical Staff's finding that the proposed special exception in the neighborhood will not be excessive or change the residential character of the neighborhood. Exhibit 18, p. 12.

C. The Master Plan

The subject property lies within the geographic area covered by the *North and West Silver Spring Master Plan*, approved and adopted in 2000 (Master Plan). Exhibit 8. Technical Staff advises that there are no Master Plan recommendations relevant to this property. However, Technical Staff advises that the Master Plan supports "the preservation of the residential character of the North and West Silver Spring neighborhoods that contribute to the housing objectives of the Plan." Exhibit 17, p. 6. Technical Staff found that the proposed accessory apartment furthers Master Plan objectives. Hence, Staff concluded that the subject application is consistent with the Master Plan.

The Hearing Examiner agrees with Technical Staff because the Plan supports the R-60 zoning which permits accessory apartments by special exception. In addition, this accessory apartment is not visible from the street and therefore does not change the existing structure's appearance as a single-family dwelling consistent with the surrounding neighborhood. Since the

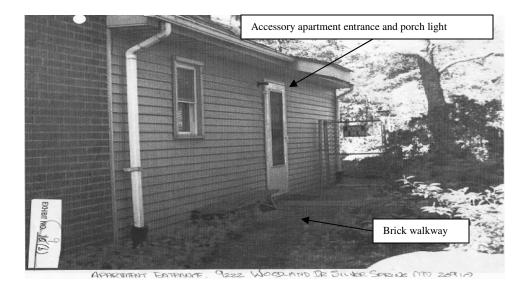
³ Ms. DeJesus reported one accessory apartment located at 8916 Woodland Drive which is 0.41 miles south of the subject property. She identified this as an "exempt" apartment that has never been rented and occupied by a relative. Exhibit 14. The second accessory apartment is located at 2014 Luzerne Drive which is 0.91 miles west of Woodland Drive. Based on the addresses provided, the Hearing Examiner finds that they are outside the defined neighborhood boundary.

exterior of Petitioner's home will not be changed and there is sufficient off-street parking to accommodate the proposed use and main dwelling, it will retain the residential appearance and compatibility sought by the Master Plan. The Hearing Examiner finds that the proposed use is consistent with the *North and West Silver Spring Master Plan*.

D. The Proposed Use

The Petitioner is seeking a special exception to allow an existing one-bedroom accessory apartment located on north side of the main dwelling. The accessory apartment is a separate living unit with its own exterior entrance located at the rear north side of the home.⁴ Access to the accessory apartment entrance is via a brick walkway connecting to the driveway. The entrance and walkway are illuminated with a 60 watt motion sensor porch light. Technical Staff found the lighting to be adequate and residential in character. Exhibit 17, p. 5.

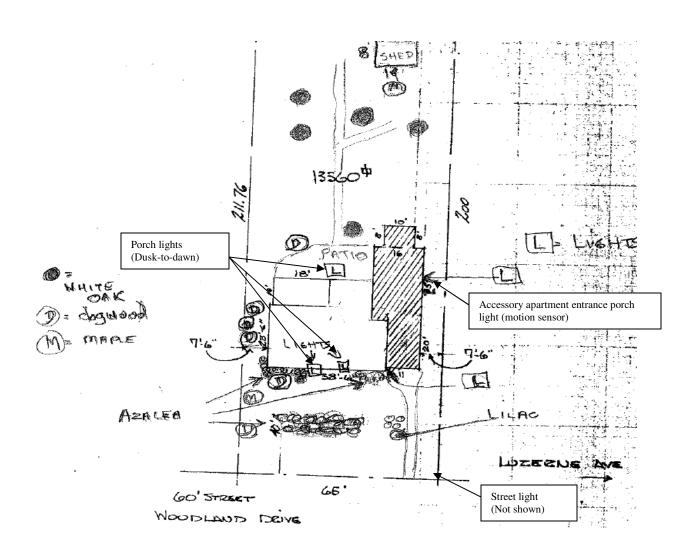
Petitioner provided the following up-close photograph of the accessory apartment entrance, porch light, and brick walkway (Exhibit 9(b)).



⁴ Petitioner identified a second rear entrance accessed through a small porch located in the rear of the dwelling facing the backyard. Both entrances into the accessory apartment are identified on the Site Plan previously shown on page 5 of this report.

Technical Staff found the accessory apartment entrance is "clearly distinct from the entrance to the main dwelling and has the appearance of a typical rear entry into a one-family home." Exhibit 17, p. 5. The Hearing Examiner concurs with Technical Staff's finding that accessory apartment entrance will not detract from the [residential] appearance of the neighborhood." *Id*.

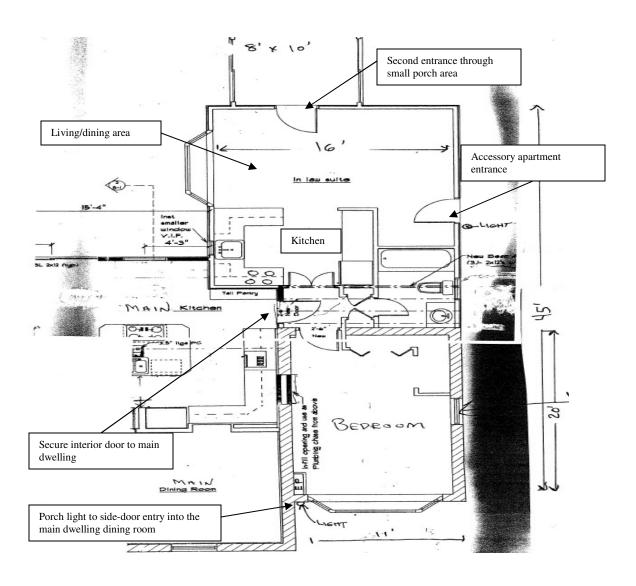
Technical Staff noted that the property is well-maintained and that Petitioner is not proposing any modifications to the dwelling or existing landscaping and lighting which is identified on the Landscape Plan (Exhibit 6), shown below:



There are five sixty (60) watt porch lights. The lights on the main dwelling (front and rear) are photocell (dusk-to-dawn) activated. There is a motion sensor porch light at the accessory apartment entrance on the side and a street light at the end of the driveway. Tr. 27-30.

The Hearing Examiner concurs with Technical Staff's finding that "[t]he walkway and grounds of the accessory apartment will be safe and illuminated while consistent with typical residential standards." Exhibit 17, p. 9.

The Floor Plan for the accessory apartment (Exhibit 5), modified by Petitioner to show the location of the bedroom window, is shown below.



The accessory apartment is approximately 412.8 square feet in size with 345 square feet of habitable space.⁵ The accessory apartment includes a bedroom, kitchen, full bath, and a living/dining room area. DHCA inspected the property on October 16, 2012, and Housing Code Inspector Robert Goff reported his findings in a memorandum with the same date. (Exhibit 13). The substance of his report is set forth below:

The preliminary inspection was conducted on October 16, 2012. The Accessory Apartment is located in the main floor of the house. The issues regarding Accessory Apartment standards are as follows:

- 1. Install egress window in bedroom. Window must be 5 sq. feet opening.
- 2. Install GFCI outlet in bathroom.
- 3. Install GFCI outlets in kitchen.
- 4. Replace bottom shelf in refrigerator.
- 5. Install breaker [blanks] in panel box.
- 6. Install cover on electrical box under breaker box.
- 7. The property has a driveway that can accommodate 3 cars.
- 8. There is off-street parking. (No permit needed).
- 9. There is 357 square feet of habitable space. The total sq. feet of the Accessory Apartment is 412.8. 2 people can live in the unit or a family of 3.

In addition to confirming the issues noted in his inspection report, Mr. Goff clarified that the bedroom window must be replaced with an egress window with a 5-square-feet opening. He also noted that Petitioner must install two GFCI outlets in the kitchen which are located within 6 feet of the sink. Petitioner agreed to comply with all the conditions set forth in the Technical Staff report (Exhibit 17) and in the Housing Code Inspector's report (Exhibit 13).

Technical Staff reports (Exhibit 17, pp.6-7):

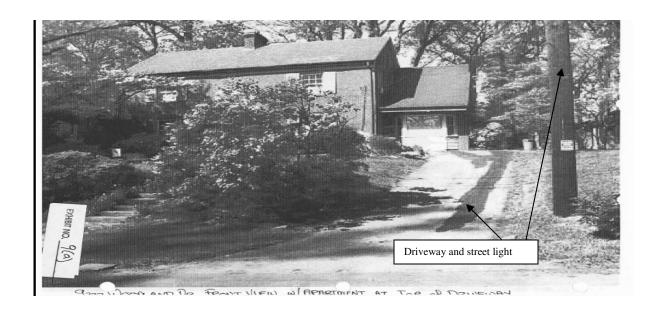
Vehicular access to the existing house and accessory apartment will be through a driveway on site. Parking for the main dwelling and the accessory apartment can be accommodated through the driveway, which provides at

⁵ Based on information provided with Petitioner's application, Technical Staff reported that the accessory apartment was 620 square feet in size. Petitioner testified that she estimated the size of the accessory apartment. However, since Mr. Goff measured the unit during his inspection, Petitioner deferred to and accepted Mr. Goff's finding that the accessory apartment is 412.8 square feet in size with 357 square feet of habitable space. Tr. 39-45.

least three parking spaces. The special exception will not have an adverse effect on vehicular and pedestrian safety.

Petitioner and Mr. Goff confirmed Technical Staff's finding that the concrete driveway can accommodate parking for three vehicles. Both also confirmed available on-street parking with no restrictions. Petitioner noted there is sufficient space in front of her house to park at least two vehicles.

Petitioner provided the following photograph of the front of the house, driveway and street light (Exhibit 9(a)):



Based on this information, the Hearing Examiner concurs with Technical Staff's finding that there is adequate off-street parking to accommodate the accessory apartment and main dwelling. Exhibit 17, p. 12.

E. Traffic Impacts

Technical Staff found that "The proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance." Exhibit 17, p. 6. Transportation Staff reported (Exhibit 16, p. 24):

Using trip generation rates included in the *Local Area Transportation Review* (*LATR*)/*Policy Area Mobility Review* (*PAMR*) Guidelines, the single-family dwelling on the property is estimated to generate one peak-hour trip during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Using the same rates, the accessory apartment is estimated to generate one additional peak-hour trip during the weekday peak periods.

Since the existing house and the accessory apartment together will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject petition. With documentation of site trip generation as above, the subject petition satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

As noted above, the single-family dwelling and the accessory apartment on the property together will generate less than four peak-hour trips during the weekday morning and evening peak periods. The subject petition is therefore not subject to the PAMR requirements of the APF test.

Due to the small scale of the proposed use, the Hearing Examiner agrees with Technical Staff that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impact on the area roadways and pedestrian facilities. Exhibit 13, p. 12.

F. Environmental Impacts

Petitioner is not proposing any external changes to the site, other than to enlarge the rear bedroom window to comply with County requirement for adequate fire escape. Technical Staff advises that the property is exempt from the Forest Conservation Law. Exhibit 17, p. 7. Based on this evidence, the Hearing Examiner finds that Petitioners' request will have no adverse environmental impacts.

G. Community Response

There has been no response from the community, either positive or negative, to the subject petition.

III. SUMMARY OF THE HEARING

Petitioner Carol A. Crawford testified at the public hearing in support of the petition.

DHCA Housing Code Inspector, Robert Goff, also testified as to compliance with the Housing Code. There was no opposition at the hearing.

A. Petitioner's Case

Petitioner Carol A. Crawford:

Petitioner submitted a copy of her deed dated December 13, 2010 (Exhibit 18). Petitioner confirmed that the property is in trust and that she is the sole trustee for the Carol A. Crawford Trust. According to the deed, Petitioner, as an individual, transferred title to the property back to herself as trustee for the Carol A. Crawford Trust. Petitioner signed the Statement in support of the Petition "Carol A. Crawford, aka Carol A. Crawford Trust" (Exhibit 3). Petitioner testified at the hearing in her capacity as trustee of the property and expressly agreed to be bound by the terms and conditions of approval if the special exception is approved. Petitioner, as trustee for the property, also consented to Carol A. Crawford, as an individual, obtaining the special exception for an accessory apartment. Tr. 8-10.

Petitioner adopted the findings and conclusions in the Technical Staff Report (Exhibit 17) and in the Housing Code Inspector's Report (Exhibit 13) as her own evidence and agreed to comply with all the conditions set forth in both reports. Petitioner was given a copy of the revised development chart from the Technical Staff report (Exhibit 17, p. 8) and the memorandum from Ms. DeJesus dated November 13, 2012 (Exhibit 14). Petitioner testified that the two (2) accessory apartments noted in Ms. DeJesus' report were located on the other side of Georgia Avenue and not in the Woodside Park neighborhood. Petitioner submitted an Affidavit of Posting. Tr. 10-16.

Petitioner provided the following history for the property and description of the existing

accessory apartment. The house was built in 1938. She described the house as a two-story brick colonial with a basement and full attic. Petitioner purchased the property from her mother in 1979 and converted the one-car garage into a living space which was extended into the rear of the property to create the existing accessory apartment. Petitioner identified the location of the accessory apartment, its two entrances and existing lighting on the Site Plan (Exhibit 4). The side entrance is located on the north side of the property and is shown in a photograph identified as Exhibit 9(b).⁶ Access to the entrance is via a brick walkway. The rear yard is fenced. Petitioner's mother resided in the accessory apartment until her death in 2005. Her adult son resided in the accessory apartment from 2005 to April 2012. Tr. 17-23.

The front of the property is shown in a photograph identified as Exhibit 9(a). Petitioner testified that the single-lane driveway can accommodate three vehicles parked in a straight line. Petitioner noted that it is possible to park a fourth car on the expanded concrete apron at the top of the driveway if needed. Petitioner testified that there are no parking restrictions on her street and sufficient space to park at least two vehicles in front of her house. Additionally, there is sufficient room on the side of the driveway to provide access to the brick walkway to the accessory apartment entrance on the side of the house. The second entrance to the accessory apartment can be accessed through an 8'x10' porch located at the rear of the dwelling. The door to the left of the bay window in the front of the house, as shown in Exhibit 9(a), is a side-entry into the dining room of the main dwelling and is not a part of the accessory apartment. Tr. 24-27, and 35-36.

Petitioner identified the existing landscape and lighting for the property as shown on the Landscape and Lighting Plan (Exhibit 6). There are five sixty (60) watt porch lights. The lights on the main dwelling (front and rear) are photocell (dusk-to-dawn) activated. There is a motion

⁶ The second photograph was incorrectly identified as 10(b). The Hearing Examiner corrected the error and marked the photograph of the side entrance to the accessory apartment as Exhibit 9(b). Tr. 21.

sensor porch light at the accessory apartment entrance on the side. There is a street light at the end of the driveway. Tr. 27-30.

Petitioner testified that she will make all the repairs noted in the Housing Inspector's report. Petitioner modified the Floor Plan (Exhibit 5) to identify the egress window to be installed in the bedroom. Petitioner will replace the current double-hung casement window with a swing out casement window. The interior door from the accessory apartment to the main dwelling is located in the hallway between the bedroom and the kitchen and is secure.

Petitioner estimated the size of the accessory apartment to be 620 square feet. However, she deferred to and agreed with Mr. Goff's finding that the accessory apartment is 412.8 square feet in size, 357 square of habitable space. Petitioner and her husband will reside in the main dwelling and occupancy in the accessory apartment is limited to no more than two (2) unrelated persons or a family of three. Tr. 31-35 and 39-45.

B. Public Agency Testimony

Housing Code Inspector Robert Goff:

Housing Code Inspector Robert Goff testified that he inspected the property on October 16, 2012, and reported his findings in a memorandum dated October 16, 2012 (Exhibit 13). Mr. Goff reviewed and confirmed the issues noted in his report. He corrected item number 5 which should read: "Install breaker blanks in panel box." He clarified that Petitioner must install two GFCI outlets in the kitchen which are located within 6 feet of the sink (item number 3). He confirmed that the accessory apartment is 412.8 square feet in size with 357 square feet of habitable space. Based on the habitable space, occupancy is limited to no more than two people or a family of three. He noted that Technical Staff measures the size of the accessory apartment from the outside walls and he measures the space from the interior walls which can be between 5 to 8

inches on one wall. Tr.36-39.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception if she complies with the recommended conditions. Exhibit 17.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use as long as Petitioner complies with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties and in the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code Section 59-G-1.2.1. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational characteristics not necessarily associated with the particular use, or

adverse effects created by unusual characteristics of the site." *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the "necessarily associated" characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 17, p. 9):

- (1) The existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
- (2) The provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the applicable code provisions;
- (3) A separate entrance and walkway and sufficient exterior lighting;
- (4) Sufficient parking;
- (5) The existence of an additional household on the site with resulting additional activity, including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) The potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence with only a modest increase in traffic, parking

and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found that there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff summarized the evidence as follows (Exhibit 17, p. 9):

In the instant case, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located next to the main dwelling and is non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

The accessory unit has a separate entrance apart from the main dwelling. The apartment entrance is typical of a rear-entry to a one-family house, making it difficult to distinguish from any other neighborhood home. The walkway and grounds of the accessory apartment will be safe and illuminated while consistent with typical residential standards.

Parking for the accessory apartment will be sufficient. There is space for at least three vehicles to park along the property's driveway. There are adequate choices to ensure sufficient neighborhood parking even with the existence of an additional household on the block.

Based on these findings, Staff concluded (Exhibit 17, p. 10):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no non-inherent adverse effects present in this case.

Based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concurs with Technical Staff and concludes that there are no non-inherent adverse effects from the proposed use.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The

Technical Staff report and the Petitioners written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21 General conditions.

- § 59-G-1.21(a) -A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:
 - (1) Is a permissible special exception in the zone.

<u>Conclusion</u>: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

<u>Conclusion</u>: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property is covered by the *North and West Silver Master Plan*, approved and adopted in 2000. For reasons set forth in Part II.C of this report, the

Hearing Examiner finds that the planned use, an accessory apartment in a one-family detached home located in the R-60 Zone, is consistent with the goals and objectives of the *North and West Silver Spring Master Plan*.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion:

The proposed special exception will be in harmony with the general character of the neighborhood. The accessory apartment adjoins the main dwelling on the north side with a separate entrance typical of a rear entrance for a single-family home. It therefore will maintain its residential character. Occupancy will be limited to no more than two unrelated persons or family of three and therefore will have only minimal impact on population density and intensity of use. There is sufficient offstreet parking on the concrete driveway (three vehicles) to accommodate the main dwelling and accessory apartment. Further, there are adequate choices for on-street parking in front of Petitioner's home. According to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There are no other accessory apartment uses within the Staff-defined neighborhood. The Hearing Examiner finds that the addition of the proposed accessory apartment to the neighborhood will not be excessive or change the residential character of the neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion:

For the reasons set forth in the answer to the previous section of this report, the Hearing Examiner agrees and finds that the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion:

Technical Staff found: "Based on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity. The use will cause no objectionable illumination or glare as the provided lighting is residential in character." Exhibit 17, p. 11. The accessory apartment entrance and walkway will be illuminated with a 60 watt motion sensor porch light. Since the use will be indoors and residential, the Hearing Examiner concurs with Technical Staff and finds it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are

consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion:

Technical Staff advises that there are no other accessory apartments located in the neighborhood. DHCA reported two accessory apartments which by their addresses (8916 Woodland Drive and 2014 Luzerne Drive) are located west of Georgia Avenue and therefore outside the neighborhood boundary. Staff noted one other special exception use (gas station) located a few blocks northwest of the property in the C-2 Zone at the intersection of Georgia Avenue and Columbia Boulevard. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion:

The evidence supports the conclusion that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the subject site.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: Technical Staff indicates that "[t]he proposed special exception will be adequately served by existing public services and facilities." Exhibit 17, p. 13. The evidence supports this conclusion.

- (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.
- (B) *If the special exception:*
 - (i) does not require approval of a new preliminary plan of subdivision; and
 - (i) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion:

The special exception sought in this case will not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Since the existing house, combined with the proposed accessory

apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: Based on the evidence of record, especially the availability of adequate off-street parking and the limited number of additional trips generated by the special exception, the Hearing Examiner concurs with Technical Staff and finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 17), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

(1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.

<u>Conclusion:</u> Only one accessory apartment is proposed.

(2) The accessory apartment must have at least one party wall in

common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.

<u>Conclusion:</u> The accessory apartment adjoins the main dwelling on the north side (ground level) of an existing one-family home and therefore shares a wall in common, as required for a lot of this size (under one acre).

(3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment is located on the north side (ground level) of an existing one-family dwelling.

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

<u>Conclusion:</u> The house was built in 1938. Exhibit 15. The rear extension of the main dwelling on the north side was built in 1979. Exhibit 3. It therefore meets the "5 year old" requirement.

- (5) The accessory apartment must not be located on a lot:
 - (i) That is occupied by a family of unrelated persons; or
 - (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living

unit; or

(iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.

Conclusion: The use as proposed does not violate any of the provisions of this subsection.

Also, a requirement that the occupancy of the main dwelling and the accessory apartment meet all these standards will be a condition of this approval.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: Access to the accessory apartment is through an existing separate rear entrance located on the north side of the dwelling. The entrance is typical of a rear-entry door to a single-family home and is separate and distinct from the main dwelling entrance. Thus, there will be no change to the residential appearance of the dwelling and the appearance of a single-family dwelling is preserved.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling, with the exception of the installation of an egress window required by DHCA (Exhibit 13). The egress window will replace the existing window and therefore will not require any structural changes. The Hearing Examiner finds that this minor change, necessary for residential occupancy, will not affect the residential nature of the structure.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.

Conclusion: Based on the information Petitioner provided in her application, Technical Staff reported that the accessory apartment was 620 square feet. The Housing Code Inspector, based on the measurements he recorded during the preliminary inspection of the property, reported that the accessory apartment is in fact 412.8 square feet in size. Thus, the total floor area of the accessory apartment is well under the maximum 1,200 square feet restriction. According to the SDAT records for the property (Exhibit 14), the total enclosed area for the dwelling is 2,752 square feet. Thus, the Hearing Examiner finds, as did Technical Staff, that the accessory apartment is subordinate to the dwelling.

59-G § 2.00(b) Ownership Requirements

(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

<u>Conclusion:</u> The Petitioner and her husband will live in the main dwelling on the property.

(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

<u>Conclusion:</u> As discussed in footnote 2 on page 3 of this report, Petitioner submitted her deed,

of the property from Petitioner, as an individual, back to herself as sole trustee of

dated December 13, 2010, to the property. Exhibit 18. The deed reflects a transfer

the Carol A. Crawford Trust. The deed and the SDAT records (Exhibit 14) for the

property also reflect that prior to this transfer of title to the trust, Petitioner, as an

individual, has owned the property since April 30, 1992. Based on the evidence of

record, including Petitioner's testimony, the Hearing Examiner finds that the

Petitioner has owned the property as an individual since 1992 and as trustee for

the Carol A. Crawford Trust since 2010. The one-year rule has therefore been

satisfied.

(3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.

<u>Conclusion:</u> The Petitioner will receive compensation for occupancy of only one dwelling unit as a condition of the special exception.

(4) For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.

Conclusion: For the reasons set forth in the answer to the previous section (§ 59-G-2.00(b)(2), and in footnote 2 on page 3 of this report, the Hearing Examiner finds that the Petitioner is the owner the property. Petitioner retained an equitable interest in the property when she transferred the property from herself as an individual back to herself as sole trustee of the Carol A. Crawford Trust (Exhibit 18). Therefore, the Hearing Examiner concludes that this condition has been met.

(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

<u>Conclusion:</u> Not applicable.

59-G § 2.00(c) Land Use Requirements

(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion:

The subject lot is approximately 13,360 square feet in size and therefore satisfies the 6,000 square feet minimum lot size. Technical Staff, the subject property conforms to all the applicable development standards of the R-60 Zone, except for the side-yard setbacks. Technical Staff advises that because the lot was platted in 1936 and the house was built in 1938, the development standards of the 1928 Zoning Ordinance apply and the minimum side-yard setback of 7 feet per side is met for this property. Exhibit 16. The following table from the Technical Staff report (Exhibit 17, p. 8) summarizes the relevant development standards for the application.

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	2 stories	§ 59-C-1.327
Minimum Lot Area	6,000 sq. ft.	13,360 sq. ft.	§ 59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	65 ft.	§ 59-C-1.322(b)

Minimum Lot Width at Street Line	25 ft.	65 ft.	§ 59-C-1.322(b)
Minimum Setback from Street	25 ft.	40 ft.	§ 59-C-1.323(a)
Minimum Side Yard Setback	7 ft.	7.5 ft.	1928 Zoning Ordinance- Attachment to Article 59, § III (C)3
Minimum Rear Yard Setback	20 ft.	110 ft.	§ 59-C-1.323(b)(2)
Maximum Building Coverage	35 percent	Approx. 13 percent	§ 59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	620 sq. ft ⁷ .	§ 59-G-2.00(a)(9)

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: Based on a combined reading of the reports by Technical Staff (Exhibit 16) and DHCA (Exhibit 14) there is one approved accessory apartment approximately 0.33 miles northeast of the subject property and outside the staff-defined neighborhood. There are no other accessory apartments or special exceptions within the staff-defined neighborhood. The Hearing Examiner concurs with Technical Staff's conclusion and finds that the proposed special exception will not create an excessive concentration of similar uses.

- (3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:
 - (i) More spaces are required to supplement on-street parking; or
 - (ii) Adequate on-street parking permits fewer off-street

⁷ The Housing Code Inspector reported, based on measurements recorded during his preliminary inspection on October 16, 2012, that the accessory apartment is 412.8 square feet in size. Exhibit 13.

spaces.

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: As discussed in Part II.B of this report, there is sufficient off-street parking for at least three vehicles on the concrete driveway to accommodate the main dwelling and accessory apartment. Staff also noted there were sufficient choices of available on-street parking. The Housing Code Inspector confirmed Staff's finding of adequate off-street parking. The Hearing Examiner finds, therefore, that the minimum requirement of two (2) parking spaces has been met and there is sufficient off-street parking to accommodate the main dwelling and accessory apartment.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in Article 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D of this Report, the Housing Code Inspector's report (Exhibit 13) notes certain issues and recommends that occupation of the accessory apartment be limited to no more than two (2) unrelated persons or a family of three. Petitioner has agreed to comply with the occupancy limitations and that she will meet all conditions, including making the necessary repairs, required by the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Carol A. Crawford, BOA No. S-2849, which seeks a special exception for an accessory apartment to be located at 9222 Woodland Drive, Silver Spring, Maryland, be GRANTED, with the following conditions:

- 1. Petitioner is bound by her testimony, representations and exhibits of record;
- 2. Petitioner must comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13):
 - a. Install egress window in bedroom. Window must be 5 square feet opening
 - b. Install GFCI outlet in bathroom.
 - c. Install GFCI outlets in kitchen.
 - d. Replace the bottom shelf in the refrigerator.
 - e. Install breaker blanks in panel box.
 - f. Install a cover on the electrical box under breaker box.
 - g. The total habitable space in the accessory apartment is approximately 357 square feet and occupancy is limited to two (2) individuals or a family of three.
- 3. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
- 4. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
- 5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
- 6. Both Petitioner, as trustee of the Carol A. Crawford Trust, and the Petitioner as an individual, are bound by the conditions of this special exception; and
- 7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: December 27, 2012

Respectfully submitted,

Jammy J. Citar Mann Tammy J. Citara Manis
Hearing Examiner